Supreme Court, U.S.
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No. 03-1112

IN THE

Supreme Court of the United States

DAWN EDLUND,

Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA and BOB RYAN MOTORS, INC., a Minnesota corporation,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONER'S SUPPLEMENTAL BRIEF

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QUESTIONS PRESENTED FOR REVIEW

The Federal Odometer Law, 49 U.S.C. § 32710, *et seq.*, expressly mandates an award of reasonable costs and attorney's fee to a prevailing plaintiff, and a federal court--*every* federal court--has a fundamental responsibility to enforce congressional legislation and may not exercise its inherent power in a way which conflicts with constitutional or statutory provisions.

The questions presented are:

1. Whether the Eighth Circuit erred when it refused to require the district court to comply with its clear, ministerial, and nondiscretionary duty to award petitioner her statutorily-mandated attorney's fees and costs.

2. Whether the district court's failure to comply with its clear, ministerial, and nondiscretionary duty to award petitioner her statutorily-mandated attorney's fees and costs deprived petitioner of property in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution.

PARTIES TO THE PROCEEDING

Petitioner Dawn Edlund is a resident of Minnesota and an electrical engineer employed by Medtronic, Inc., in Fridley, Minnesota.

Respondent United States District Court for the District of Minnesota is an Article III court of the United States of America.

On May 15, 1999, respondent Bob Ryan Motors, Inc., d/b/a Bob Ryan Ford in Minnetonka, Minnesota, sold a two-year-old 1997 Ford Mustang GT convertible to petitioner. Respondent is a non-public Minnesota corporation, the sole shareholder of which is Thomas Ryan. In December 1999, respondent sold the assets of its Ford dealership to Ridgedale Automotive, Inc., which changed the name of the dealership to Morrie's Minnetonka Ford. Petitioner initially sued Ridgedale Automotive and later joined respondent with leave of court, after which petitioner pursued her case only against respondent.

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Other Authorities:

Address of Seth P. Waxman, Solicitor General of the United States, to the Supreme Court Historical Society, June 1, 1998. 3

Simon E. Sobeloff, *Attorney for the Government: The Work of the Solicitor General's Office*, 41 A.B.A. J. 229, 229 (Mar. 1955). 3

INTERVENING MATTER

Upon the filing of the petition for a writ of certiorari, the District Court for the District of Minnesota was added as a respondent by this Court *sua sponte*. Consistent with S. Ct. R. 29.4(a), petitioner thereupon served three copies of the petition on the Solicitor General, whose deadline to respond was March 5, 2004.[1] On March 9, 2004, petitioner's attorney inquired of this Court as to why the Solicitor General's response or waiver did not appear to have been filed and why the district court had never been entered on the docket as a respondent. His questions were put before the Chief Deputy Clerk, who reportedly concluded that the Solicitor General was under no obligation to respond or file a waiver since the district court was only a "nominal" respondent because it had not been a party or a respondent below.

The problem with that is this: Under Fed. R. App. P. 21, as amended in 1996 "in order to change the tone of [Rule 21] and mandamus proceedings generally," a trial judge may not be treated as a respondent on a petition to a court of appeals for a writ of mandamus or prohibition. That is why the petitioner's petition to the Eighth Circuit for a writ of mandamus was captioned *In re Dawn Edlund, Petitioner* rather than *Dawn Edlund, Petitioner v. The Honorable Ann Montgomery, Respondent.* A trial judge would not even become a respondent if invited or ordered by a court of appeals to address the petition pursuant to Fed. R. App. P. 21(b)(4).

As a result, this Court will never confront a case in which the trial judge was made a party or respondent

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[1] On February 23, 2004, the attorney for respondent Bob Ryan Motors waived responding but is not a member of the bar of this Court in any event.

to a petition for a writ of mandamus or prohibition below. By rule it will never occur, and the Solicitor General's obligation to respond or file a waiver on behalf of the district court in this case cannot be properly tied to the occurrence of something that cannot occur.

The Eighth Circuit could have, should have, but did not invite or order the trial judge to address the petition or invite an *amicus curiae* to do so. In that regard, petitioner argued as follows in her petition to the Eighth Circuit for a writ of mandamus:

> If called upon to file an answer to this petition pursuant to Fed. R. App. P. 21(b), neither the respondents' attorney (who is more accurately described as the attorney for respondents' NYSE-delisted and probably[2] insolvent insurance company), the district court judge, nor a hundred *amici curiae* will be able to cite any authorities or circumstances which justify or excuse the district court's failure to comply with its clear, ministerial, and nondiscretionary duty to award prevailing plaintiff Edlund her statutorily-mandated costs and reasonable attorney's fees. The arguments set out herein are incontrovertible. The existence of an inherent power to impose sanctions on an attorney does not excuse what the district court did nor mitigate its seriousness in any way, and the district court's unlawful exercise of its inherent power is not excused or mitigated in the least by [the

[2] Subsequently, the insurance company was indeed liquidated.

> trial judge's] derisive and baseless after-the-fact rationalizations [as set out in the trial judge's Memorandum Opinion and Order at Pet. App. 5a-9a].

On June 1, 1998, Seth P. Waxman, Solicitor General of the United States, addressed the Supreme Court Historical Society and said in pertinent part:

> [T]he Solicitor General's special relationship to the Court is not one of privilege, but of duty -- to respect and honor the principle of stare decisis, to exercise restraint in invoking the Court's jurisdiction, and to be absolutely scrupulous in every representation made. As one of my predecessors, Simon Sobeloff, once described the mission of the office:
>
> > The Solicitor General is not a neutral, he is an advocate; but an advocate for a client whose business is not merely to prevail in the instant case. My client's chief business is not to achieve victory, but to establish justice. Simon E. Sobeloff, *Attorney for the Government: The Work of the Solicitor General's Office*, 41 A.B.A. J. 229, 229 (Mar. 1955).

In this case, however, establishing injustice is the chief business of the Solicitor General's client. Nevertheless, even if that presents the Solicitor General with a dilemma, as it will, a response should be invited because nothing should be of more concern to this

Court than a judge's failure to enforce constitutional and statutory provisions and a judge's disregard for the precedents of this Court which, *inter alia*, put specific limits on the exercise of a court's inherent power.

CONCLUSION

This Court should invite the Solicitor General to file a brief expressing the views of the United States concerning the challenged acts of the district court.

Respectfully submitted,

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